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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/728,623	01/30/2004	Wesley Allen Bainter	3369W	9073
7590	12/30/2005			
Robert O. Blinn				
P.O. Box 75144				
Wichita, KS 67275-0144				
EXAMINER				
BEACH, THOMAS A				
ART UNIT		PAPER NUMBER		
3671				

DATE MAILED: 12/30/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/728,623	<b>Applicant(s)</b> BAINTER, WESLEY ALLEN	
	<b>Examiner</b> Thomas A. Beach	<b>Art. Unit</b> 3671	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-4 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>05/14/04</u> | 6) <input type="checkbox"/> Other: ____.  |

## DETAILED ACTION

### *Claim Objections*

1. Claims 1 is objected to because of the following informalities: on line 21 of claim 1, it appears --path-- should be inserted after "curved". Appropriate correction is required.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Lindell et al 3,77,241. Lindell shows a trencher, a wheeled carriage V; a boom 40, digging chain 44 and support frame R; chain drive motor (col. 4, lines 55-58); and a generally transverse, adjustably mounted augers 46 with an auger sprocket wheel. Lindell shows an earth moving blade 48 where the chain when lowered is able to excavate a trench along a curved path since Lindell shows the forward and rear portion pivotally connected 32 and the steering mechanism include an actuator 30 to allow the trencher to easily follow a curved path and short radius turning (figures 3 & 6) and an idler pulley (unnumbered in figure 1) to take up slack (claim 4).

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4. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Polinek 3,603,010. Polinek shows a trencher 14, a wheeled carriage 10, upright boom, digging chain and support frame, chain drive motor (see abstract) where the chain when lowered is able to excavate a trench along a curved path since Polinek shows the forward 10 and rear portion 12 pivotally connected (central pivot of tractor) and the steering mechanism include an actuator 22 to allow the trencher to easily follow a curved path and short radius turning (figure 3 & 4) and a generally transverse, adjustably mounted augers 50 (unnumbered adjacent 20/26) with an auger sprocket (col. 2, lines 36-46) and an idler pulley (unnumbered in figure 5) to take up slack (claim 4).

5. Claims 1-4 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace 4,974,348. Wallace shows a trencher 10, a wheeled carriage 12, upright boom, digging chain 17 and support frame 14, chain drive motor 16 where the chain when lowered is able to excavate a trench along a curved path since Wallace shows the forward 12 and rear portion 10 pivotally connected and the steering mechanism include an actuator 24 to allow the trencher to easily follow a curved path and short radius turning and a generally transverse, adjustably mounted augers 27/28 (82) with an auger sprocket and an idler pulley 19 to take up slack (claim 4)..

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas A. Beach whose telephone number is 571.272.6988. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 571.272.6998. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Thomas A. Beach

December 8, 2005

**THOMAS A. BEACH**  
Patent Examiner  
Group 3600